

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

DOUGLAS ASPHALT
COMPANY, JOEL H. SPIVEY,
AND KYLE SPIVEY,

Plaintiffs,

VS.

APPLIED TECHNICAL
SERVICES, INC.,

Defendant.

and

EVANSTON INSURANCE
COMPANY.

Applicant/Intervenor

Civil Action No:
2:06-cv-229-AAA

**EVANSTON'S PROPOSED VERDICT FORM WITH
SPECIAL INTERROGATORY QUESTIONS**

COMES NOW, Evanston Insurance Company (“Evanston”), Applicant/Intervenor in the above-styled civil action and files this, its **Proposed Verdict Form with Special Interrogatory Questions** as follows:

1. We the jury find that the test results provided by ATS to GDOT from its 2003 and 2004 testing done at the request of GDOT
were ____ **OR**
were not ____
privileged communications as that term has been defined to you by the Court.

If your answer to Question No. 1 is that the “test results provided by ATS to GDOT from its 2003-2004 testing done at the request of GDOT” WERE privileged communications, skip Questions 2, 3, 4, and 5, and proceed to Question 6.

If your answer to Question No. 1 is that the “test results provided by ATS to GDOT from its 2003-2004 testing done at the request of GDOT” WERE NOT privileged communications, proceed to Question 2.

2. We the jury find that ATS
did ____ **OR**
did not ____
make false statements about Douglas by providing test results from its 2003 and 2004 testing to GDOT.

If your answer to Question No. 2 is that ATS “DID make false statements about Douglas by providing of test results from its 2003 and 2004 testing to GDOT,” proceed to Question 3.

If your answer to Question No. 2 is that ATS “DID NOT make false statements about Douglas by providing of test results from its 2003 and 2004 testing to GDOT,” skip Questions 3, 4, and 5, and proceed to Question 6.

3. We the jury find that test results provided by ATS to GDOT from its 2003-2004 testing done at the request of GDOT, which were used by GDOT to place Douglas in default
were ____ **OR**
were not ____
communicated or published by ATS to third parties other than GDOT and GDOT's representatives.

If your answer to Question No. 3 is that the "results WERE communicated or published by ATS to third parties other than GDOT and GDOT's representatives," proceed to Question 4.

If your answer to Question No. 3 is that the "results WERE NOT communicated (or published) by ATS to third parties other than GDOT and GDOT's representatives," skip Question 4 and 5, and proceed to Question 6.

4. We the jury find that ATS
was ____ **OR**
was not ____
negligent in the manner in which it tested the samples it received **and** by providing the results it obtained from its testing to GDOT, which resulted GDOT placing Douglas in default.

If your answer to Question No. 4 is that the "ATS WAS negligent in the manner in which it tested the samples it received and by providing the results it obtained from its testing to GDOT, which resulted GDOT placing Douglas in default," proceed to Question 5.

If your answer to Question No. 4 is that the “ATS WAS NOT negligent in the manner in which it tested the samples it received and by providing the results it obtained from its testing to GDOT, which resulted GDOT placing Douglas in default” skip Question 5 and proceed to Question 6.

5. We the jury find that the test results ATS provided to GDOT in 2003 and 2004 caused ____ **OR**
did not cause _____
Douglas harm.
6. We the jury find that the test results provided by ATS to GDOT’s lawyers for testing done between January 1 and July 14, 2005
were ____ **OR**
were not _____
privileged communications as that term has been defined to you by the Court.

If your answer to Question No. 6 is that the “test results provided by ATS to GDOT’s lawyers for testing done between January 1 and July 14, 2005,” WERE privileged communications, skip Questions 7, 8, 9 and 10, and proceed to Question 11.

If your answer to Question No. 6 is that the “test results provided by ATS to GDOT’s lawyers for testing done between January 1 and July 14, 2005,” WERE NOT privileged communications, proceed to Question 7.

7. We the jury find that ATS
did ____ **OR**

did not _____

make false statements about Douglas when ATS provided its test results for testing between January 1 and July 14, 2005, to GDOT 's lawyers.

If your answer to Question No. 7 is that "ATS DID make false statements about Douglas when it provided its test results for testing between January 1 and July 14, 2005, to GDOT 's lawyers," proceed to Question 8.

If your answer to Question No. 7 is that "ATS DID NOT make false statements about Douglas when it provided its post-July 14, 2005 test results to GDOT's lawyers," skip Questions 8, 9, and 10 , and proceed to Question 11.

8. We the jury find that ATS

did ____ **OR**

did not _____

communicate or publish to third parties, other than GDOT's lawyers, the results of the testing it performed between January 1 and July 14, 2005.

If the answer to Question No. 8 is that the ATS DID communicate or publish to third parties, other than GDOT's lawyers, the results of the testing it performed between January 1 and July 14, 2005," proceed to Question 9.

If the answer to Question No. 8 is that the ATS DID NOT communicate or publish to third parties, other than GDOT's lawyers, the results of the testing it performed between January 1 and July 14, 2005," skip Questions 9 and 10, and proceed to Question 11.

9. We the jury find that it

was ____ **OR**

was not ____

negligent for ATS to provide the results from its testing performed between January 1 and July 14, 2005 to GDOT's attorneys.

If the answer to Question No. 9 is that it WAS negligent for ATS to provide the results from its testing performed between January 1 and July 14, 2005," proceed to Question 10.

If the answer to Question No. 9 is that it WAS NOT negligent for ATS to provide the results from its testing performed between January 1 and July 14, 2005," skip Question 10, and proceed to Question 11.

10. We the jury find that the fact that ATS provided its testing results to GDOT's lawyers from testing it performed after January 1, 2005 and July 14, 2005 caused ____ **OR** did not cause ____ .
11. We the jury find that the test results provided by ATS to GDOT's lawyers for testing done after July 14, 2005 were ____ **OR** were not ____ privileged communications as that term has been defined to you by the Court.

If your answer to Question No. 11 is that the "test results provided by ATS to GDOT's lawyers for testing done after July 14, 2005," WERE privileged communications, STOP AND DO NOT ANSWER ANY MORE QUESTIONS.

If your answer to Question No. 11 is that the “test results provided by ATS to GDOT’s lawyers for testing done after July 14, 2005,” WERE NOT privileged communications, proceed to Question 12.

12. We the jury find that ATS

did ____ **OR**

did not _____

make false statements about Douglas when ATS provided its post-July 14, 2005 results to GDOT ‘s lawyers.

If your answer to Question No. 12 is that “ATS DID make false statements about Douglas when it provided its post-July 14, 2005 test results to GDOT ‘s lawyers,” proceed to Question 13.

If your answer to Question No. 12 is that “ATS DID NOT make false statements about Douglas when it provided its post-July 14, 2005 test results to GDOT’s lawyers,” STOP AND DO NOT ANSWER ANY MORE QUESTIONS.

13. We the jury find that ATS

did ____ **OR**

did not _____

communicate or publish to third parties, other than GDOT’s lawyers, the results of the testing it performed after July 14, 2005.

If the answer to Question No. 13 is that the ATS DID communicate or publish to third parties, other than GDOT’s lawyers, the results of the testing it performed after July 14, 2005,” proceed to Question 14.

If the answer to Question No. 13 is that the ATS DID NOT communicate or publish to third parties, other than GDOT’s lawyers, the results of the

testing it performed after July 14, 2005,” STOP AND DO NOT ANSWER ANY MORE QUESTIONS.

14. We the jury find that it

was ____ **OR**

was not ____

negligent for ATS to provide the results from its testing performed after July 14, 2005 to GDOT’s attorneys.

If the answer to Question No. 14 is that it WAS negligent for ATS to provide the results from its testing performed after July 14, 2005,” proceed to Question 15.

If the answer to Question No. 14 is that it WAS NOT negligent for ATS to provide the results from its testing performed after July 14, 2005,” STOP AND DO NOT ANSWER ANY MORE QUESTIONS.

15. We the jury find that the fact that ATS provided its testing results to GDOT’s lawyers from testing it performed after July 14, 2005 caused ____ **OR** did not cause _____ Douglas harm.

16. **DO NOT ANSWER QUESTION 16 BELOW UNLESS YOU ANSWERED THAT ATS “CAUSED DOUGLAS HARM” IN RESPONSE TO QUESTIONS 15.**

If you found that ATS **caused** harm to DOUGLAS by providing the results of its tests post-July 14, 2005 to GDOT’s lawyers, what percentage of harm do

you attribute to

- a. the 2003 and 2004 actions of ATS? _____
- b. ATS's actions between January 1, 2005 and July 14, 2005? _____
- c. ATS's actions after July 14, 2005? _____

Respectfully submitted, this 13th day of September, 2009.

/s/ Peter H. Schmidt, II
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CERTIFICATE OF SERVICE

This hereby certifies that on this day, I electronically filed the ***Evanston's Proposed Verdict Form with Special Interrogatory Questions*** with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record:

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Respectfully submitted, this 13th day of September, 2009.

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